FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 623 of 2005
(Atmaram Gopala Raut Vs. Shantabai Raghoji Iratkar & 3 ors.)

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mrs. Suhasini Deshpande, Adv. for the appellant.
Mr. V.G. Wankhede, Adv. for R- 1 to 4.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 17th September, 2007

Heard the learned counsel for the parties.

The appellant is the original defendant. A suit was filed by the plaintiff for declaration, partition, possession and mesne profit. It was the case of the plaintiff that her husband Raghoji and the defendant no. 1 had purchased the suit property jointly in the year 1960. The plaintiff further pleaded that the defendant no.1 was cultivating the share of Raghoji and was giving the produce of Raghoji's share to him regularly every year. Raghoji died in the year 1973. It was then pleaded that the defendant no.1 was giving the account of the crops statement and account of the produce received from the suit property to the plaintiff till the year 1994 and, there was, therefore, no dispute between the parties. However, according to the plaintiff, since the year 1995, the

defendant no.1 avoided to pay the share of the plaintiff to her, and, therefore, the plaintiff instituted a suit in the year 1997. The plaintiff joined the joint owner of the property as the defendant no.1 and also impleaded her own sons and daughters as other defendants to the suit as the plaintiff had also sought partition and separate possession of her share in the suit property.

The defendant no.1 filed his written statement and denied the claim of the plaintiff. The defendant no.1, however, admitted that the suit property was purchased by Raghoji and the defendant no.1 in the year 1960. It was, however, pleaded in the written statement that in the year 1960, Raghoji was in need of money and the defendant no.1 paid an amount of Rs. 1,000/- to Raghoji. According to the defendant no.1, since Raghoji did not repay the amount to the defendant no.1, there was a quarrel between the parties and the defendants was in adverse possession over the western half portion of the suit land which was owned by Raghoji. It was the case of the defendant no.1 that the defendant no.1 had perfected his title over the suit property by adverse possession. The other defendants who are the legal heirs of Raghoji, had remained ex parte.

The trial Court, after considering the evidence tendered by the parties on record on the

issues involved in the suit, held that the plaintiff had succeeded in proving that she had half share in the suit property along with the defendant nos. 2 to 4. The trial Court further held that the defendant no.1 failed to prove his title to the suit property by adverse possession. The Court then held that the suit was filed within the prescribed period of limitation as the defendant no.1 was giving the proceeds from the suit field to the plaintiff till the year 1994. The Court also held that the defendant no. 1 had failed to prove that after the quarrel in the year 1960, the defendant no.1 was holding the suit property as an absolute owner thereof openly and to the knowledge of the plaintiff. The findings recorded by the trial Court were confirmed by the first appellate Court in an appeal filed by the defendant no.1 against the judgment and decree passed by the trial Court. Both these judgments are challenged in the instant appeal.

I have perused both the judgments as also the pleadings of the plaintiff and the defendant no. 1. The defendant no.1 had pleaded that though Raghoji and defendant no.1 had purchased the property in the year 1960, the defendant no.1 was adversely holding the same as an owner thereof, after the quarrel between himself and Raghoji in the year 1961. It is conspicuous to note that the defendant no.1 admitted in his cross-examination

that there was no agreement between Raghoji and the defendant no.1 that the defendant no.1 would retain the possession of the entire suit property if Raghoji fails to repay an amount of Rs. 1,000/- to the defendant no.1. Both the Courts weighed the evidence tendered by the plaintiff with the evidence tendered by the defendant no.1 and held that the plaintiff had succeeded in proving that the defendant no.1 was giving the half share of the proceeds to the plaintiff till 1994 and cause to file a suit arose in the year 1995 when the defendant no. 1 refused to give the share of the plaintiff in the proceeds from the field property. Both the Courts concurrently recorded a finding of fact that the defendant no.1 had failed to prove his ownership over the suit property by adverse possession. The Courts held that when one co-owner is in possession of the property owned by the other co-owner, the possession of the co-owner would also be deemed to be the possession of the other co-owners, though they are not factually in possession of the property. Since the joint ownership of Raghoji over the suit property was not disputed by the defendant no.1 and since the defendant no.1 had failed to prove the ownership over the suit property by adverse possession, both the Courts rightly arrived at a conclusion that the plaintiff was entitled to partition and separate possession of the

suit property and the suit filed by the plaintiff was within the prescribed period of limitation as the defendant no.1 was giving share in the produce of the suit property to the plaintiff till the year 1994.

Since the findings recorded by both the Courts are pure findings of facts and do not give rise to any substantial question of law, the second appeal is liable to be dismissed.

The second appeal is, therefore, dismissed as such with no order as to costs.

JUDGE

RMP